IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6503 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PATEL HASMUKHBHAI DHULABHAI

Versus

DISTRICT PRIMARY EDUCATION OFFICER

Appearance:

1. Special Civil Application No. 6503 of 2002

MR KB PUJARA for Petitioner No. 1

MR HS MUNSHAW for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 13/08/2004

ORAL JUDGEMENT

1.0 The petitioner herein has challenged the action of the respondent authority denying him appointment as a

Vidhya Sahayak despite the fact that he was selected for the said post as per the letter dated 25/02/2002, at Annexure `D' to the petition and in initiating new process of selection / recruitment by advertisement dated 10/07/2002, at Annexure `H' to the petition.

2.0 The petitioner had passed the S.S.C. and C.P.Ed. examinations and was therefore eligible and qualified to be appointed as a Primary Teacher / Vidhya Sahayak. The respondent issued advertisement dated 07/08/2001, at Annexure `A' to the petition, for recruitment to 729 posts of Vidhya Sahayaks. The petitioner being qualified for the said posts also applied for the same.

2.1 By call-letter dated 27/12/2001, at Annexure `C' to the petition, the petitioner was called for oral interview on 07/01/2002. Pursuant to the said interview, the petitioner was selected by the Selection Committee of the respondent authority. The petitioner was placed at Sr.No.34 in the select list of candidates. Thereafter, by letter dated 25/02/2002, at Annexure `D' to the petition, the petitioner was informed that as he was selected for the said post, he should remain present in the camp mentioned in the said letter for the selection of his place of posting.

2.2 When the petitioner went to the said camp as per the direction of the respondent authority vide its letter dated 25/02/2002, he was orally told that his name was not reflected in the select list of candidates and that he might be issued appointment order subsequently. As the petitioner did not receive any appointment order, he made representation dated 08/06/2002 to the Director of Primary Education, at Annexure `G/1' to the petition. But the said representation was not decided.

2.3 Meanwhile, by advertisement dated 10/07/2002, at Annexure `H' to the petition, the respondent invited fresh applications for the posts of Vidhya Sahayaks. The petitioner could not apply for the said posts as he had already completed 33 years of age as on 01/06/2002. Feeling aggrieved by the aforesaid actions of the respondent authority, the petitioner has preferred this petition before this Court.

3.0 Mr.K B Pujara learned advocate for the petitioner has contended that as per the call-letter dated 25/02/2002, at Annexure `D' to the petition, the petitioner was informed that his name was in the selection list and that he should remain present in the camp only for the purpose of selection of his place of

posting. Moreover, even under the Recruitment Rules, there was no provision with respect to any `wait list' and that the said provision was only for the purpose of preparation of `selection list'.

3.1 Mr.Pujara has further submitted that even if it is assumed that the name of the petitioner was in the so-called `wait list' of candidates, then also as per the Recruitment Rules, the said `list' remains in operation for one year. He has further submitted that the petitioner was not eligible to apply afresh for the posts of Vidhya Sahayaks as per the advertisement of the respondent authority dated 10/07/2002, at Annexure `H' to the petition, as the petitioner had already completed 33 years of age as on 01/06/2002. Therefore, the action of the respondent authority denying the petitioner appointment and initiating new process of selection / recruitment by its advertisement dated 10/07/2002 is illegal and erroneous and deserves to be quashed and set aside.

3.2 Mr.Pujara has relied upon a decision of this Court in the case of Nagar Prathmik Shikshan Samiti, Baroda v. Kanchanben Dahyabhai Mistri & Ors. reported in 1991 (1) G.L.R. p.1. Para 7 of the said decision is relevant which reads as under;

"The first decision cited by Mr.P G Desai is the decision in the case of Jatinder Kumar & Ors. v. State of Punjab & Ors. reported in 1985 (1) SCC 122. In this case, the Supreme Court had an occasion to consider the selection by the Public Service Commission and the right of the person to get appointed by the Government on such selection. The Supreme Court held ;

"In absence of any provision in the Constitution making the acceptance of the advice tendered by the Public Service Commission, when consulted, obligatory, Art.320(3) is rendered only directory and not mandatory. The selection by the Commission is only a recommendation and the final authority for appointment is Government. The Government may accept the recommendation or may decline to accept the same. But if it chooses not to accept the recommendations, the Government is made answerable to the legislature under Art.323. If the vacancy is to be filled up, the Government has to make appointment strictly adhering to the order of merit as recommended by the Public

Service Commission. It cannot disturb the order of merit according to its own sweet will except for other good reasons, viz. bad conduct or character. The Government also cannot appoint a person whose name does not appear in the list. But it is open to the Government to decide how many appointments will be made. The process for selection and selection for the purpose of recruitment against anticipated vacancies does not create a right to be appointed to the post which can be enforced by a mandamus.

The reason for refusing appointment in our case is not that there is no post to be filled in, but for unjustifiable and arbitrary reasons, even though the select list is a valid one and that vacancies for those selected are available. In spite of that, appointment is refused. When such is the position, it cannot be said that the respondents are agitating for the right to be appointed, merely on the ground of their names being in the select list. Here is a case in which (i) the applicants are selected, (ii) vacancies are there and a decision was taken to fill them up, (iii) call letters were issued to the respondents to appear and receive appointment and posting letters, (iv) but at the last moment actual appointment orders are withheld arbitrarily by interpreting a Court order in a way in which no rational person could have interpreted it, viz. that it required scrapping of the whole list. In these circumstances, the decision cited by Mr.Desai can have no application to the present case."

3.3. On the facts of the case, the ratio laid down in the aforesaid decision will squarely apply to the present case.

4.0 Mr.M V Patel learned advocate for Mr.H S Munshaw for the respondent has contended that the respondent authority has acted in accordance with the merits of the candidates and as per the policy of the State Government with respect to the appointment of Vidhya Sahayaks.

4.1 As per the State Government policy, 5% of the advertised posts were to be filled through C.P.Ed. candidates. In the present case, out of the 729 posts for Vidhya Sahayaks, 36 posts were to be filled through C.P.Ed. candidates. Out of the 36 posts, 8 posts could not be filled because of non-availability of scheduled

tribe, SEBC and physically handicaped candidates. Therefore, by letter dated 13/12/2001, at Annexure `C' to the petition, the State Government had directed that the posts meant for reserved category be filled by way of appointing general category candidates. Accordingly, 8 candidates belonging to the general category were appointed.

4.2. The petitioner could not be appointed as all the 36 posts were filled up in accordance with the merit / policy of the State Government. He has therefore submitted that the respondent authority was justified in its action of not selecting the petitioner for the said post.

5.0 I have heard Mr.K B Pujara learned advocate for the petitioner and Mr.M V Patel learned advocate appearing for Mr.H S Munshaw for the respondent. Even if the submissions of Mr.Patel for the respondent are accepted, then also from the record it is clear that the petitioner was at Sr.No.37 in the select list of candidates, meaning thereby, that the petitioner was at Sr.No.1 in the wait list of candidates. As per the advertisement dated 20/07/2002 there were 41 vacancies and as per the Guidelines issued by the State Government, the petitioner ought to have been absorbed by the respondent.

5.1 From the select list of candidates at Annexure `D' to the petition, it is clear that the petitioner was selected on 25/02/2002. The said letter was issued to the petitioner only for the purpose of selection of his place of posting. Therefore, the petitioner is entitled for seniority from the date on which the other candidates were appointed by the respondent to the said post.

5.2 Thus, it is clear that as on 10/07/2002, there were 41 vacancies and that the petitioner was at Sr.No.1 in the wait list of candidates. It was the duty of the respondent authority to absorb the candidates who were in the said waiting list. Therefore, the petitioner is entitled for appointment, since he was selected by the Selection Committee of the respondent authority and since the Guidelines of the State Government pertaining to the select list of candidates remains in force for one year.

6.0 For the foregoing reasons, this petition is allowed. The respondent authority is directed to issue a fresh appointment order to the petitioner as Vidhya Sahayak on the basis of selection, pursuant to the advertisement dated 07/08/2001, at Annexure `A' to the

petition, which was confirmed by it, by letter dated 25/02/2002, at Annexure `D' to the petition.

6.1 It is clarified that the petitioner will be given seniority along with the other appointees who were selected along with the petitioner, pursuant to the advertisement dated 07/08/2001 for the said posts. However, the petitioner will not be entitled for any salary for the above period. Rule is made absolute to the aforesaid extent with no order as to costs.

(K. S. Jhaveri, J.)

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